

# State of Wisconsin \ Government Accountability Board

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Director and General Counsel

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## **MEMORANDUM**

**DATE:** February 24, 2011

**TO:** The Honorable Members, Wisconsin State Senate

**FROM:** Kevin J. Kennedy, Director and General Counsel  
Government Accountability Board

**SUBJECT:** Senate Substitute Amendment 1 to 2011 Senate Bill 6

Senator Leibham requested our office provide suggestions for technical amendments to Senate Substitute Amendment 1 to 2011 Senate Bill 6 (SSA 1). Our staff has reviewed the proposed legislation as well as input provided by several municipal clerks. This memorandum provides suggestions for minor technical changes. The memorandum also describes several administrative issues based on the Substitute Amendment. Some of these issues were raised in my testimony before the Senate Committee on Transportation and Elections on January 26, 2011, a copy of which accompanies this memorandum. I encourage the Legislature to consider our suggestions to address these issues.

### **Minor Technical Changes**

1. *Section 11, Page 11, Line 1.* The word “identification” is missing following the phrase “name on the proof of ...”
2. *Section 32, Page 23, Line 25.* The language at the beginning of the line should read “conforms to” rather than “is the same as.” This makes the standard of review by the poll workers consistent throughout the legislation.
3. *Section 39, Page 26, Line 8.* The language in this section needs to be modified to clarify the proof of identification offered to the election inspectors is for the elector who can not enter the polling place. This can be done by inserting the word “elector’s” before “name” on line 8.

Given the very short time between introduction of the Substitute Amendment and scheduling the legislation for a vote in the Senate we have not been able to do a comprehensive evaluation of the Substitute Amendment to determine if other purely technical changes are required. We will apprise Senate and Assembly Leaders as well as Standing Committee Chairs and Members of any additional technical changes we think are necessary to facilitate administration of the legislation.

### **Significant Administrative Issues**

The legislation presents some administrative issues that the agency believes need to be addressed to ensure Wisconsin elections can be administered with a photo identification requirement in a fair, uniform and transparent manner that preserves public confidence in the integrity of the electoral process. If these changes are not made in the Senate, I hope they will be considered in the Assembly or a trailer bill which is effective for the 2012 elections. None of the proposed changes go to the transitional provisions for elections conducted before the 2012 Spring primary.

#### **1. Signing the Poll List on Election Day**

The Substitute Amendment creates a requirement for voters to sign the poll list. *SSA 1, Section 30*. This was a recommendation developed by this agency to enhance the integrity of the voting process. Current law requires two poll lists be maintained at the polling place. A voter should only have to sign one time at the polls. Consideration should be given to only maintaining a single poll list if voters are required to sign the list. This will save local election officials money and time when printing poll lists. In the case of larger municipalities, the savings will be significant.

If a single list is used, several different statutes need to be changed. Of particular concern are the reconciliation procedures at the close of voting and in recounts.

When electronic poll lists are used, the voter should sign a serially numbered list with the voter's signature on a line that corresponds to the serial number issued to the voter. The Substitute Amendment requires a full poll list to be printed for the purpose of capturing voters' signatures. This creates additional unnecessary administrative costs. The purpose of electronic poll lists is to eliminate the use of paper and integrate voter participation into the Statewide Voter Registration System (SVRS).

#### **2. Absentee Voters Signing a Poll List**

The Substitute Amendment requires an in-person absentee voter to sign a poll list in the office of the municipal clerk. *SSA 1, Section 49*. This requires creating a third poll list or a special list which will have to be reconciled with the poll lists used at the polling place following the election. The in-person absentee voter must already sign two documents in the office of the municipal clerk to cast an absentee ballot: the absentee ballot application form and the absentee certificate-envelope. These two signatures coupled with the photo identification requirement provide significant enhancements to the integrity of the in-person absentee voting process without adding inefficient and costly steps to the process.

The requirement for an in-person absentee voter to sign a poll list in the office of the municipal clerk should be eliminated.

### **3. Treatment of Voters with Disabilities Signing the Poll List**

The Substitute Amendment requires voters who claim to be unable to sign the poll list due to a disability to vote a challenged ballot if the election inspectors (poll workers) or the municipal clerk do not waive the signature requirement. *SSA 1, Section 31 Page 23, Lines 12-18; and Section 49, Page 33 Lines 14-20.* This presents a number of issues. What standards should election officials use to refuse to waive the signature requirement and what record should be made of the decision? The decision at the polling place to waive the signature requirement because of a disability should be left to the chief inspector or his designee rather than having the two election inspectors who maintain the poll lists make the decision.

The voter may provide satisfactory proof of his disability to the appropriate board of canvassers. There is no specified treatment of the challenged ballot if the proof is not provided or if it is provided other than further review by the board of canvassers to determine the validity of the ballot. There is no standard for the board of canvassers. In addition, the board of canvassers meets immediately after the polls close in municipalities with one reporting unit, within 24 hours after the polls in the case of other municipalities and school districts, and within 48 hour after the polls close in the case of counties.

The Legislature may want to consider whether this burden on voters with disabilities and the accompanying cumbersome administrative procedures are essential to maintaining the integrity of electoral process.

### **4. Challenging Voters Who Do Not Adhere to Voting Requirements**

The Substitute Amendment requires election inspectors to challenge a voter who does not adhere to any voting requirement. *SSA 1, Section 68.* Voting requirements include satisfying eligibility requirements (Age 18, U.S. citizen, 28-day resident, completing registration), stating name and address, showing required proof of residence or proof of identification, and ensuring that the name on the proof of identification conforms to name on poll list and that the proof of identification reasonably resembles voter.

This provision appears to apply only to voters who refuse to sign the poll list. Voters who refuse to give their name or address are not permitted to vote. Voters who refuse or are unable to show required proof of residence or proof of identification may vote a provisional ballot. If the name on the proof of identification does not conform to the name on poll list or the proof of identification does not reasonably resemble the voter, the voter may vote a provisional ballot.

This and the previous issue appear to be concerns about voters refusing to sign the poll list. This should be clarified. Otherwise election inspectors may challenge voters resulting in ballots being casted where provisional ballots should be issued instead.

## **5. Extending the Deadline for Resolving Provisional Ballots**

The Substitute Amendment extends the deadline for submitting required proof of identification or proof of residence to the municipal clerk from 4 pm on the day following the election until 4 pm on the Friday following the election. *SSA 1, Section 74*. However all boards of canvassers meet before that deadline to canvass vote totals, prepare statements of votes cast, make determinations of winning candidates and certify results.

This creates issues in certifying election results, conducting recounts. Our staff, in consultation with local election officials, is willing to develop recommendations for integrating the resolution of provisional ballots with the canvassing and recount processes.

## **6. Proof of Identification for Absentee Voters**

The Substitute Amendment maintains the cumbersome and convoluted requirements for absentee voters to provide proof of identification that were in the original bill. The legislation accommodates certain at-risk absentee voters with disabilities and in special homes and care complexes. However, these accommodations inject a level of complexity in the administration of absentee voting that will create confusion for those voters and make it extremely difficult to train local election officials and election inspectors.

The significant administrative issues related to this requirement are described in my testimony to the Senate Committee on Transportation and Elections at pages 3 – 5. From an administrative and practical perspective, the single biggest improvement that could be made to the legislation is eliminating the photo identification requirement for absentee voters who vote by mail, or in front of special voting deputies in nursing homes, qualified retirement homes, qualified community-based residential facilities, certified residential care apartment complexes, and certified or licensed adult family homes.

## **7. Outreach to Absentee Voters**

The Substitute Amendment requires absentee electors who receive ballots automatically as indefinitely confined voters under §6.86 (2) or for all elections in a calendar year under §6.86 (2m) to submit a copy of proof of identification before receiving an absentee ballot in 2012. These categories of absentee voters do not submit a ballot request at each election. If proof of identification for absentee voters is retained in the legislation, municipal clerks will have to reach out to these voters before the 2012 elections to inform them of the proof of identification requirements and alternatives.

## **8. Transitional Implementation**

The Substitute Amendment requires election inspectors to request photo ID at elections prior to the 2012 Spring Primary, but allows voters to cast ballots without producing it. *SSA1, Section* This procedure will help to familiarize voters and pollworkers with procedures which will be fully in effect starting in 2012. However, the Substitute Amendment requires a

number of other significant substantive and administrative changes to go into effect immediately which are impractical or impossible to implement and would create confusion at polling places if required as early as the April 5, 2011 Spring Election or the May 3, 2011 Special Elections. One example of these changes is the residency requirement of 28 days rather than 10 days. Another example is requiring voters to sign the poll lists. The G.A.B. cannot complete the required programming changes in the Statewide Voter Registration System, modify the format of poll lists and voter registration forms, and communicate and train local election officials regarding such significant substantive and procedural changes in election laws for the spring elections.

There is educational value to having election inspectors and voters get into the routine of handling photo identification. The value of that practice will be diminished if it is accompanied by an immediate change to the residency rule, or requiring significant other administrative procedures to the electoral process without adequate preparation, publicity, and training. We suggest limiting any transitional implementation to the requirement to ask for photo ID, without any consequence for failing to produce it.

### **Conclusion**

We believe these changes will enhance implementation of a photo identification requirement for voting in a more effective and efficient manner for voters and election officials while maintaining public confidence in a secure, accessible and transparent election process.

Thank you for your consideration of our concerns. We are willing to work with you to develop photo identification legislation that can be implemented in a manner that effectively and efficiently serves the voters and local election officials.